

*The original of this document contains information which is subject to withholding from disclosure under 5 U.S. C. § 552. Such material has been deleted from this copy and replaced with XXXXXX's.

**United States Department of Energy
Office of Hearings and Appeals**

In the Matter of:	Personnel Security Hearing)	
)	
Filing Date:	January 17, 2023)	Case No.: PSH-23-0052
)	
)	

Issued: April 13, 2023

Administrative Judge Decision

Steven L. Fine, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXX (hereinafter referred to as “the Individual”) to hold an access authorization under the Department of Energy’s (DOE) regulations set forth at 10 C.F.R. Part 710, entitled “Procedures for Determining Eligibility for Access to Classified Matter and Special Nuclear Material.”¹ As discussed below, after carefully considering the record before me in light of the relevant regulations and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (June 8, 2017) (Adjudicative Guidelines), I conclude that the Individual’s access authorization should not be restored.

I. Background

On April 8, 2022, the Individual contacted local police to report an incident (the Incident). The resulting police report states in pertinent part:

On April 8th 2022 at approximately 0103 hours [the Individual] called 911 to report he was the victim of theft . . . [The Individual] stated, he was using an online dating ‘Adultchat.net.’ He stated he was scammed out of a large amount of monies. [The Individual] believes he was speaking to someone from the Philippines. [The Individual] sent nude images of himself through this dating website. The Actor then used the images as black mail to extort monies from [the Individual]. [The Individual] first sent \$313.99 . . . then \$510.47[.]

Ex. 11 at 1.

¹ Under the regulations, “[a]ccess authorization means an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material.” 10 C.F.R. § 710.5(a). Such authorization will also be referred to in this Decision as a security clearance.

On April 11, 2022, the Individual reported the Incident to a Local Security Office (LSO), providing the following account:

I went on Adultchat.net and messaged a fake user account . . . for her SnapChat user name . . . (fake accounts posing as a 23 year old woman from UK –maybe London). Within a half an hour I was blackmailed with my pictures and threats to send them to my contacts if I did not pay. Over the course of the next few hours, I tried to de-escalate this cybercriminal but eventually paid him.

Ex. 14 at 1. The Individual reported that he had paid the “cybercriminal” \$314 on April 7, 2022, and \$510.49.² *Id.* The Individual further stated: “I decided to schedule an emergency appointment with my therapist [(the Therapist)] this past Friday 4/8/22 to discuss porn addiction. I like to think that I have most of my life under control but, unfortunately after something bad happened to me, I now really want to address some of my personal issues that led me to become a victim of this cyberattack.” *Id.* at 2-3.

On May 10, 2022, the LSO issued its first Letter of Interrogatory (LOI) to the Individual inquiring about the Incident. Ex. 13 at 1. The Individual submitted his response to this LOI on May 16, 2022, in which he reported that he had been engaging in online adult-oriented chatting since “2009 or 2010.” *Id.* He described this activity as, “Masturbating to porn that sometime leads to chatting online where I try to find attractive women to share pictures with.” *Id.* He further reported that his online activity included sharing explicit pictures of himself during these adult-oriented chats. *Id.* The Individual reported that a “cyber-criminal” contacted him and threatened to send the explicit pictures that the Individual had shared during adult-oriented chats to the Individual’s contact list on a social media site. *Id.* The Individual reported: “After trying to reason with this person for hours and unfortunately paying them twice, they tried to release the pictures on both SnapChat and Facebook.” *Id.* The Individual stated that his girlfriend was unhappy with him after learning that he was chatting with other women. *Id.* The Individual further stated, “I try my best to use self-control and enjoy my habits without letting them overconsume me, but this cyber-attack made me realize that I need some help. I am talking about this in my therapy sessions now and hopefully will find balance and more self-control with this activity.” Ex. 12 at 2. The Individual denied that he has ever viewed pornography, engaged in adult chats, or exchanged explicit photographs at work, during work hours, or while using government property. *Id.* He further asserted that he has not been subject to further extortion attempts and that he is not susceptible to further extortion since he “has been on high alert since this attack.” Ex. 12 at 2–3. In response to the LOI’s questions concerning his mental health treatment, the Individual provided the following statement:

I originally decided to go to a therapist (approx. a year and a half ago) to get help with my anxiety regarding my relationship with my girlfriend . . . and still go to therapy for this reason. . . . Since the cyberattack, I have finally started to discuss porn addiction with my therapist. I usually go to therapy twice a month and my next appointment is on Friday 5/20. My therapist . . . has provided a lot of good advice on addiction, discussed relevant studies, and suggested to work on strengthening open communications with friends and family. She also suggested finding more

² The Individual did not provide the transaction date for the \$510.49 payment. Ex. 14 at 1.

social activities to build current and new relationships with people in real life. I think she basically wants me to improve my emotional support system. . . . I can continue to provide updates as I continue my therapy appointments.

Ex. 12 at 3-4.

On June 2, 2022, the LSO issued a second LOI to the Individual inquiring about the Incident which the Individual responded to on June 10, 2022. Ex. 9 at 1. In this response, he provided the information requested in the second LOI, and stated: “I plan to continue my therapy sessions and find a support group for porn addiction as recommended by my therapist.” *Id.* The Individual’s response to the second LOI included a letter from the Therapist, dated June 10, 2022, in which she stated that the Individual’s treatment began on October 1, 2020, and that his initial diagnosis was Generalized Anxiety Disorder (GAD). Ex. 9 at 2. However, she subsequently diagnosed the Individual with “Pornography Addiction” (PA). *Id.* She further stated: “[The Individual’s] prognosis has been good and he appears intrinsically motivated on working through his triggers.” *Id.* She further opined:

At this time, my recommendation would be for [the Individual] to continue individual outpatient therapy with me 2x a month, continue building natural support systems, engage in healthy coping skills, and reach out to outside support groups for Pornography Addiction. [The Individual] appears to not have any conditions that would impair his judgment, reliability, or ability to properly safeguard classified national security information. His behavior indicates that he is acting in compliance with the expectations and policies set forth by his employer.

Ex. 9 at 2–3.

On June 21, 2022, the LSO issued a third LOI to the Individual in which it requested information concerning the Individual’s attendance of a support group for persons with PA. Ex. 8 at 1. The Individual submitted his response to the third LOI on June 28, 2022, in which he identified the support group as Sexaholics Anonymous (SA). Ex. 7 at 1. He further reported that he had attended two SA meetings. Ex. 7 at 1.

After reviewing the Individual’s responses to the LOIs, the LSO requested that he undergo an evaluation by a DOE-contracted Psychiatrist (Psychiatrist), who conducted a clinical interview (CI) of the Individual on August 29, 2022. Ex. 5 at 2. In addition to conducting the CI, the Psychiatrist reviewed a complete set of the Individual’s counseling records maintained by the Therapist. Ex. 5 at 2, 4. After considering all the information available to him, the Psychiatrist issued a report (the Report) on September 7, 2022, in which he concluded:

[The Individual] has a “pornography addiction” that can impair judgment, stability, reliability, and trustworthiness. Pornography addiction is not an official DMS-5 diagnosis but compulsive use of pornography resembles compulsive use and loss of control of substances such as alcohol or street drugs formulated in those areas as a “substance use disorder.” The elements of the pornography addiction, analogous to a substance use disorder, were enumerated above and include tolerance, loss of

control, greater use than intended, self-medication of emotional distress with pornography, self-harm, impairment in functioning, with displacement of valued nonsexual activities. The employee is well aware of his lack of self-control of his pornography use which in the present case has extended to sharing sexually explicit photographs of himself on the Internet with one extortion episode in April 2022.

Ex. 5 at 8. The Psychiatrist further concluded:

There is no evidence at this time of rehabilitation or reformation and his prognosis is therefore uncertain. He has participated in individual counseling for generalized anxiety disorder but had not raised the pornography dependence and chatting with Internet females with his therapist until spring 2022. That disorder is not the direction in which her counseling has been directed and that is not her training and experience by his report. He has attended four or five sessions of SA, a self-help program analogous to Alcoholics Anonymous, but that has not resulted in rehabilitation or reformation. His prognosis depends upon his pursuit of adequate and appropriate treatment for the foreseeable future, and it would be premature to predict the course and outcome of this treatment at this time. The chronicity of his Internet pornography is a negative risk factor for his rehabilitation. His reportedly deficient communication skills, coping skills, uncertainty about the romantic relationship, and "people pleasing" personality are further negative risk factors for his rehabilitation, though he expressed his motivation to improve self-control of his pornography use.

Ex. 5 at 8–9. Concerning the recommended treatment for the Individual's mental condition, the Psychiatrist opined:

Though it is appropriate for him to continue to attend SA groups for the foreseeable future, this is not a sufficient treatment to achieve rehabilitation or reformation. . . . There is debate in the professional literature about whether this kind of behavior can be considered a psychiatric diagnosis. He has not demonstrated other compulsive sexual conduct to my knowledge so that no [other] paraphilic disorder can be diagnosed. He will need to participate in counseling in individual and/or group formats with an experienced and skilled therapist in this area for the foreseeable future. I anticipate that at least a year of such treatment, if successful, would be a minimum amount of time necessary for adequate evidence of rehabilitation but there is no such guarantee of such at that time point. Subsequent psychiatric reevaluation could be useful or necessary at that time to evaluate his progress, prognosis, and security risk. . . . He has had symptoms and a diagnosis of generalized anxiety disorder, but that disorder is not directly relevant or contributing to his Internet pornography use or chatting behavior.

Ex. 5 at 9. The Psychiatrist further reported that the Individual "denied that his behavior constitutes a security risk to the DOE." Ex. 5 at 5.

After receiving the Report, the LSO began the present administrative review proceeding by issuing a Notification Letter to the Individual informing him that he was entitled to a hearing before an Administrative Judge to resolve the substantial doubt regarding his eligibility to hold a security clearance. *See* 10 C.F.R. § 710.21.

On January 9, 2023, the Individual submitted his response to the Notification Letter in which he requested a hearing and contended that he has mitigated the security concerns set forth in the Notification Letter. The LSO forwarded his response to the Office of Hearings and Appeals (OHA). The Director of OHA appointed me as the Administrative Judge in this matter. At the hearing I convened pursuant to 10 C.F.R. § 710.25(d), (e), and (g), I took testimony from three witnesses: the Individual, the Therapist, and the Psychiatrist. *See* Transcript of Hearing, Case No. PSH-23-0052 (hereinafter cited as “Tr.”). The LSO submitted 14 exhibits, marked as Exhibits 1 through 14. The Individual submitted five exhibits, marked as Exhibits A through E.

Exhibit A is a flow chart prepared by the Individual for the purposes of the present proceeding. In this flow chart the Individual makes several statements. The Individual notes that he voluntarily self-reported the incidents that led to the suspension of his security clearance. Ex. A. The Individual further noted that his security clearance was not suspended until two months after his CI and contends that “[a] real security risk would have been addressed on the day identified.” *Id.* The flow chart further notes that he does not work with classified information. *Id.* The flow chart also expresses other concerns of the Individual about the DOE’s security clearance process. *Id.*

Exhibit B is letter dated February 22, 2023, from the Therapist to the Administrative Judge, providing an update to the Therapist’s June 28, 2023, letter. In this letter, the Therapist repeats much of the information that she previously provided. She further states, in pertinent part:

[The Individual’s] prognosis continues to be good as he works on his treatment goals. Each time we meet, we set SMART goals (specific, measurable, achievable, realistic, and timely) that he can focus on. We utilized a strength-based approach to discuss how he has been adjusting to changes within his employment as well as his family life. In addition, he continues to report that he routinely attends Sex Addicts Anonymous meetings . . . and engages in healthy coping skills. At this time, my recommendation would be for [the Individual] to continue individual outpatient therapy with me 2x a month. In addition, it would be beneficial for [the Individual] to continue building natural support systems, practice healthy coping skills, and continue engagement with outside support groups for Pornography Addiction. [The Individual] appears to not have any conditions that would impair his judgment, reliability, or ability to properly safeguard classified national security information. His behavior indicates that he is acting in compliance with the expectations and policies set forth by his employer.

Ex. B at 1. Exhibit B also includes a copy of the Therapist’s Curriculum Vita.

Exhibit C is a copy of the Individual’s employer’s Frequently Asked Questions concerning the employer’s Workplace Substance Abuse Program. Exhibit D is a copy of the Individual’s employer’s memo to its employees concerning “Mental Health and Security Clearances.” Exhibit

E consists of four of the Individual's performance evaluations conducted in 2019, 2020, 2021, and 2022, none of which are relevant to the issues in the present case.

II. The Notification Letter and the Associated Security Concerns

As indicated above, the Notification Letter informed the Individual that information in the possession of the DOE created substantial doubt concerning his eligibility for a security clearance. In support of this determination, the LSO cites Adjudicative Guidelines D and I.

Under Adjudicative Guideline D (Sexual Behavior), the LSO cites the Individual's admitted compulsion to engage in high-risk sexual behavior which led him to be vulnerable to coercion, exploitation, or duress and his admission that he found himself unable to stop this behavior. These allegations adequately justify the LSO's invocation of Guideline D. The Adjudicative Guidelines state: "Sexual behavior that . . . reflects a lack of judgment or discretion; or may subject the individual to undue influence of coercion, exploitation, or duress . . . may raise questions about an individual's judgment, reliability, trustworthiness, and ability to protect classified or sensitive information." Adjudicative Guidelines at ¶ 12. "Sexual behavior includes conduct . . . via audio, visual, electronic, or written transmission." *Id.* Among those conditions set forth in Guideline D that could raise a disqualifying security concern are "a pattern of compulsive, self-destructive, or high-risk sexual behavior that the individual is unable to stop" and "sexual behavior that causes an individual to be vulnerable to coercion, exploitation, or duress." Adjudicative Guidelines at ¶ 13(b) and (c).

Under Adjudicative Guideline I (Psychological Conditions), the LSO cites the Psychiatrist's conclusion that the Individual has a Pornography Addiction which the Psychiatrist concluded impairs the Individual's judgment, reliability, stability, and trustworthiness without evidence of rehabilitation or reformation. These allegations adequately justify the LSO's invocation of Guideline I. The Adjudicative Guidelines state: "[c]ertain emotional, mental, or personality conditions can impair judgement, reliability, or trustworthiness." Adjudicative Guidelines at ¶ 27. Among those conditions set forth under Guideline I that could raise a disqualifying security concern is "[a]n opinion by a duly qualified mental health professional that the individual has a condition that may impair judgement, stability, reliability or trustworthiness." Adjudicative Guidelines at ¶ 28(b).

III. Regulatory Standards

A DOE administrative review proceeding under Part 710 requires me, as the Administrative Judge, to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all of the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person's access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). The regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for granting security clearances indicates "that security determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990) (strong presumption against the issuance of a security clearance).

The individual must come forward at the hearing with evidence to convince the DOE that granting or restoring access authorization “will not endanger the common defense and security and will be clearly consistent with the national interest.” 10 C.F.R. § 710.27(d). The individual is afforded a full opportunity to present evidence supporting his eligibility for an access authorization. The Part 710 regulations are drafted to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. 10 C.F.R. § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

IV. Hearing Testimony

At the hearing, the Individual admitted that he has “a pornography compulsion.” Tr. at 19. He testified that prior to the Incident he had been receiving counseling from the Therapist for anxiety, relationship, and communication issues and that his therapy continues to address those issues. Tr. at 26–28. Prior to the Incident, however, he had not informed the Therapist of his compulsive behavior and his therapy had not addressed compulsive behavior or pornography.³ Tr. at 30, 101. Immediately after the Incident, he contacted the Therapist to schedule an “emergency” appointment because he realized that he had “a problem to address” that he could not handle on his own. Tr. at 28–29. Through therapy, he has realized how vulnerable he is and that he needs to change his behavior. Tr. at 29–30. He joined SA on the Therapist’s recommendation and attends meetings twice a month. Tr. at 41, 47, 98, 106. The Individual does not have an SA sponsor, yet, but is in the process of trying to obtain one. Tr. at 52–53. He believes he is making progress in his therapy. Tr. at 35. The Individual admitted, however, that he still goes to adult chat rooms, albeit with much less frequency.⁴ Tr. at 38, 41, 54, 70–71. The Individual further admitted that he still exchanges explicit pictures during these chat sessions. Tr. at 76–77. The Individual testified that he realizes that going to chat rooms exposes him to a further extortion incident but claimed that he is being more careful by not using personally identifiable information.⁵ Tr. at 54, 67. He testified that he often experiences regret after attending chat rooms. Tr. at 70–71. He described his efforts to control his compulsions as “a work in progress” and testified that his compulsion is less intense and that his compulsive behavior is now less frequent.⁶ Tr. at 40, 45, 65, 70–71, 75. He sees his relapses as part of his recovery. Tr. at 71–72. The Individual has not sought to obtain counseling from a therapist who specializes in addressing sexual addictions or compulsions. Tr. at 101–102. When I asked the Individual “what were your errors in judgment that led you to this hearing today,” he cited his attempts to negotiate with the person who was extorting him. Tr. at 112–113. He could not identify any further errors in judgment. Tr. at 113. The Individual admitted that he thought he was chatting with foreign nationals but was not sure. Tr. at 115.

³ Prior to the Incident, he did not see his online activity as a problem. Tr. at 25.

⁴ The Individual testified that he had been engaging in online adult activities since he was 18, but he now engages in these activities on a less frequent basis. Tr. at 37.

⁵ He claimed that he has not been extorted since the Incident. Tr. at 47.

⁶ The Individual opined that having to focus on the present proceeding was inhibiting his progress in therapy. Tr. at 31–33.

The Therapist testified that she is a Master Level Therapist with a professional counseling license. Tr. at 24. She is also currently a doctoral candidate. Tr. at 124. She testified that she has prior experience in treating sexual addictions. Tr. at 162. The Individual originally sought assistance from her to address relationship issues and to learn healthy coping skills, and she initially diagnosed him with GAD.⁷ Tr. at 126, 128. Prior to the Incident, the Individual's therapy did not focus on compulsion, the use of pornography, or chat rooms. Tr. at 133. After the Incident, the Individual's therapy began to address his "sex addiction," which, she testified, was not the sole topic of his therapy, but rather "a supplemental factor." *Id.* She diagnosed the Individual with PA on April 22, 2022, noting that PA has an International Statistical Classification of Diseases and Related Health Problems (ICD) Code.⁸ Tr. at 135. She further testified that PA is recognized in the Diagnostic and Statistical Manual of Mental Disorders – Fifth Edition (DSM-5) and on cross-examination, stated that she is certain that PA is recognized in the DSM-5. Tr. at 138, 161–62. The Therapist characterized the Individual's PA as "also a compulsion." Tr. at 138. According to the Therapist, she diagnosed the Individual with PA because he was experiencing deep shame and guilt after using pornography or attending chat rooms but nevertheless repeatedly continued engaging in those activities. Tr. at 138–39. She testified that the Individual has been a meaningful participant in his therapy and has consistently made good progress. Tr. at 140, 143. She noted that the Individual is receptive and engaged in his therapy and is being honest and forthright about his relapses rather than being in denial. Tr. at 144, 151, 172. She further opined that while the Individual has returned to using chat rooms, he has been honest and truthful about returning to this compulsive behavior and has been able to avoid being extorted again. Tr. at 156. She believes that although the Individual is still attending chat rooms, he has not sent any money to others during these chats. Tr. at 150. She recommended that the Individual attend SA and testified that he needs to obtain and work with an SA sponsor. Tr. at 144, 151. She also recommended that the Individual engage in couples' counseling and an evidence-based addiction recovery program. Tr. at 145, 152. The Therapist testified that she has been using a "harm reduction" approach to the Individual's PA since studies show that the "abstinence model" does not work. Tr. at 146. The harm reduction model expects that addicts will relapse and repeat their behavior. Tr. at 150. She testified that the Individual's PA therapy can be expected to take time. Tr. at 147. The Therapist opined that the Individual's prognosis is good. Tr. at 171. The Therapist explained her conclusion that the Individual does not have any conditions that would impair his judgment, reliability, or ability to properly safeguard classified national security information, by noting that the Incident was an isolated incident, and that the Individual is typically very careful about the decisions he makes. Tr. at 154–55. She is working with the Individual to develop his coping skills and to get him to engage in social activities rather than revert to online chats. Tr. at 173. She testified that the Individual's PA is really a secondary issue, "the formidable and also main core issues still remain anxiety and having a hard time connecting with others." Tr. at 178.

At the hearing, the Psychiatrist testified that he diagnosed the Individual with GAD and PA. Tr. at 200. However, he did not believe that the Individual's GAD "specifically contributed" to his

⁷ She sees the Individual every other week. Tr. at 133.

⁸ The International Statistical Classification of Diseases and Related Health Problems, is a medical classification list maintained by the World Health Organization and is customarily used by medical and mental health professionals in the United States.

PA. *Id.* He acknowledged that the DSM-5 does not recognize PA as a diagnosis. Tr. at 200. The Psychiatrist indicated that the Individual does meet the ICD's criteria for "Compulsive Sexual Behavior Disorder." Tr. at 223–24. The Psychiatrist opined that the Individual's behaviors constituted a "compulsive activity" and that the Individual's condition could be described as an addiction, a compulsion, or an impulse control problem. Tr. at 200, 212. He testified that, in addition to interviewing the Individual for two-and-a-half hours on August 29, 2022, he reviewed the Individual's personnel security file. Tr. at 197. His findings were set forth in the Report he issued on September 7, 2022. Tr. at 198. The Psychiatrist testified that at the time of the Report it was too early in the Individual's treatment to determine whether he was reformed or rehabilitated from his SA and that his opinion has not changed since the report, since the Individual has continued to engage in his compulsive and risky behaviors. Tr. at 201–02. He opined that the Individual's personality and family problems add to his risk of relapse and that these problems have not been resolved. Tr. at 202. He further opined that the Individual "continues to present a significant risk to himself and to the government with regard to this situation," stating "there continues to be ongoing risk of not just pornography use, which is in itself a problem, so much as the chat room participation and sexting, sharing sexual images of himself. That kind of behavior is high risk behavior for him." Tr. at 202–03. The Psychiatrist opined that the Individual should "see a specialist in this area rather than a general mental health counselor" and that "SA meetings standing alone would not be a sufficient remediation for his problems." Tr. at 204–05. The Psychiatrist considers the Individual to still be in the "preliminary stages of treatment," noting that the Individual hasn't found a SA sponsor and is still engaging in compulsive and risky behaviors. Tr. at 206. The Psychiatrist opined that the Individual needs to fully abstain from sexually oriented online chats and exchanging adult pictures. Tr. at 207, 221. The Psychiatrist also noted that the Individual's concealment of these activities from his girlfriend and family constitutes an additional risk factor. Tr. at 208. He noted that the Individual does appear to be making progress. Tr. at 209. He noted that there is no consensus on how to treat behaviors like the Individual's. Tr. at 215. The Psychiatrist opined that a treatment is not adequate "if the patient has continued symptoms and problems." *Id.* The Psychiatrist opined that the Individual "needs to have a year of treatment in which he is either abstaining or making tremendous progress from his pornography use and chat use." Tr. at 217–18. The Psychiatrist opined that the Individual's continuing participation in online adult chats and exchanging explicit photos with unknown actors, including possibly foreign nationals, leaves him vulnerable to further exploitation and demonstrates continued impairment of his judgment. Tr. at 219–20.

IV. Analysis

The Individual demonstrated impaired judgment when he chose to engage in adult-oriented chats with strangers on the internet, whom he believed to be foreign nationals, while maintaining a DOE security clearance. He again demonstrated significantly impaired judgment by exchanging explicit photographs with these presumed foreign nationals. The Individual further exhibited poor judgement by succumbing to these extortion attempts by making two payments to an extortionist, therefore demonstrating the potential national security implications of his behavior. The Individual, however, exhibited sound judgement, courage, and integrity by contacting law enforcement and the LSO to report the continuing extortion attempts. Moreover, the Individual has begun to address the root causes of the behaviors that led to his impaired judgment and made him vulnerable to exploitation by attending SA and working with the Therapist. However, despite

his efforts to control his behavior, the Individual admits that he continues to engage in adult chats and to exchange explicit photographs with strangers on the internet, albeit at a reduced frequency – the same behaviors which led to the Incident and have rendered him vulnerable to coercion, exploitation, or duress. Therefore, I find that the Individual continues to demonstrate impaired judgment and to engage in behaviors which pose a risk to the national security and common defense.

A. Guideline D (Sexual Behavior)

The Adjudicative Guidelines provide that there are five conditions that could mitigate security concerns under Guideline D. They include:

- (a) the behavior occurred prior to or during adolescence and there is no evidence of subsequent conduct of a similar nature;
- (b) the sexual behavior happened so long ago, so infrequently, or under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or judgment;
- (c) the behavior no longer serves as a basis for coercion, exploitation, or duress;
- (d) the sexual behavior is strictly private, consensual, and discreet; and
- (e) the individual has successfully completed an appropriate program of treatment, or is currently enrolled in one, has demonstrated ongoing and consistent compliance with the treatment plan, and/or has received a favorable prognosis from a qualified mental health professional indicating the behavior is readily controllable with treatment.

Adjudicative Guidelines at ¶ 14.

Mitigating factor (a) is not applicable in the present case because the behavior began occurring when the Individual was an adult and is continuing to occur. Mitigating factor (b) is not applicable in the present case because the behavior continues to occur and casts significant doubt on his current reliability, trustworthiness, and judgment. Mitigating factor (c) is not applicable in the present case because the Individual continues to exhibit the same behavior that has served as a basis for coercion, exploitation, or duress. Mitigating factor (d) is not applicable in the present case because the Individual's continuing behavior is not strictly private and discreet since it is occurring on the internet among strangers. Mitigating factor (e) is not applicable in the present case because, although the Individual has enrolled in a program of treatment, he has not demonstrated that program is appropriate since he continues to exhibit compulsive and risky behaviors and since the most qualified mental health professional who provided an opinion during this proceeding convincingly testified that it is too early in his recovery to determine that he has a favorable prognosis or that his behavior can be controlled with treatment.

Accordingly, I find that the Individual has not mitigated the security concerns raised by his behavior under Guideline D.

B. Guideline I (Psychological Conditions)

As an initial matter, I note that while the PA diagnosis is somewhat controversial, the Individual, the Therapist, and the Psychiatrist each agree on the appropriateness of the PA diagnosis to describe the Individual's mental health condition. Moreover, I found the Psychiatrist's opinions, that the Individual's present course of treatment for his PA is inadequate and has not been sufficiently effective, to be convincing.

The Adjudicative Guidelines provide that conditions that could mitigate security concerns under Guideline I include:

- (a) the identified condition is readily controllable with treatment, and the individual has demonstrated ongoing and consistent compliance with the treatment plan;
- (b) the individual has voluntarily entered a counseling or treatment program for a condition that is amenable to treatment and the individual is currently receiving counseling or treatment with a favorable prognosis by a duly qualified mental health professional;
- (c) recent opinion by a duly qualified mental health professional employed by, or acceptable to and approved by, the U.S. Government that an individual's previous condition is under control or in remission and has a low probability of recurrence or exacerbation;
- (d) the past psychological/psychiatric condition was temporary, the situation has been resolved, and the individual no longer shows indication of emotional instability;
- (e) there is no indication of a current problem.

Adjudicative Guidelines at ¶ 29. Mitigating factors (a) and (b) are not applicable in the present case because, while the Individual had been undergoing treatment for his PA at the time of the hearing, he has not yet demonstrated that his prognosis is favorable. Mitigating factor (c) is not applicable in the present case because the record shows that the Individual continues to engage in compulsive and risky behavior and because the Psychiatrist did not agree that the Individual's PA was being successfully and appropriately treated. Mitigating factors (d) and (e) are not applicable in the present case because the Individual continues to compulsively engage in behavior that poses a risk to national security and the common defense.

Accordingly, I find that the Individual has not provided adequate evidence of rehabilitation or reformation to mitigate and resolve the security concerns raised under Guideline I.

VI. Conclusion

For the reasons set forth above, I conclude that the LSO properly invoked Guidelines D and I. After considering all of the evidence, both favorable and unfavorable, in a commonsense manner, I find that the Individual has not mitigated the security concerns raised under Guidelines D and I. Accordingly, the Individual has not demonstrated that restoring his security clearance would not endanger the common defense and would be clearly consistent with the national interest. Therefore, the Individual's security clearance should not be restored. This Decision may be appealed in accordance with the procedures set forth at 10 C.F.R. § 710.28.

Steven L. Fine
Administrative Judge
Office of Hearings and Appeals